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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 897

WALTER A. YOUNGE, M. D.,
Petitioner,

v.

STATE BOARD OF REGISTRATION FOR THE HEALING ARTS,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri

PETITION FOR REHEARING

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PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari entered on February 24, 1970, and (2) granting

the petition for writ of certiorari. Petitioner has not previously presented to this Court the following substantial constitutional ground upon which this petition for rehearing is founded.

Missouri Rev. Stat., § 334.100 is so vague, indefinite and uncertain as to deprive petitioner of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

On February 24, 1970, the same day certiorari was denied in the instant case, this Court denied certiorari in **California v. Belous**, No. 971, Oct. Term, 1969. In that case, the California Supreme Court held the California abortion statute (Penal Code, Section 274) unconstitutional. See **People v. Belous**, 80 Cal. Rptr. 354, 458 P. 2d 194 (1969). California petitioned this Court for a writ of certiorari to determine: (1) whether said statute was sufficiently specific to satisfy due process without improperly infringing on fundamental constitutional rights and (2) whether the State has a sufficient compelling interest that permits it to regulate a woman's right to terminate unborn life.

In the instant case, petitioner's license to practice medicine was revoked under Missouri Rev. Stat., § 334.100 for "committing an unlawful abortion." The definition of an unlawful abortion under Missouri law necessarily relates to the criminal abortion statute (Mo. Rev. Stat., § 559.100), which is similar in material respect to the unconstitutional California statute.[1] Petitioner submits that the same un-

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[1] Missouri Rev. Stat., § 559.100, provides as follows:

"Any person, who with intent to produce or promote a miscarriage or abortion, advises, gives, sells or administers to a woman (whether actually pregnant or not), or who, with such intent, procures or causes her to take, any drug, medicine or article, or uses upon her, or advises to or for her the use of any instrument or other method or device to produce a miscarriage or abortion (unless the same is

constitutional vagueness of the California statute, judicially denounced in **People v. Belous**, *supra* (which this Court has now declined to review), is present in Missouri Rev. Stat., §§ 334.100, 559.100.[2] As such, the question here, where a physician's license has been revoked on the basis of a constitutionally infirm law, is of grave constitutional concern.

Additionally, the District Court of the District of Columbia recently declared its similar abortion statute unconstitutional. See **United States v. Vuitch**, 305 F. Supp. 1032 (1969), docketed as number 1155 this Term. The whole tenor of that decision closely conforms to the issue presented herein. Petitioner submits that the scope and importance of the issue here presented in view of the recent decisions of **People v. Belous**, *supra*, and **United States v. Vuitch**, *supra*, amply justifies a reconsideration of the denial of certiorari.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of de-

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necessary to preserve her life or that of an unborn child, or if such person is not a duly licensed physician, unless the said act has been advised by a duly licensed physician to be necessary for such a purpose), shall, in event of the death of said woman, or any quick child, whereof she may be pregnant, being thereby occasioned, upon conviction be adjudged guilty of manslaughter, and punished accordingly; and in case no such death ensue, such person shall be guilty of the felony of abortion, . . ."

[2] We point out that the California abortion statute in **People v. Belous**, *supra*, had been amended by the legislature prior to the time the petition for writ of certiorari was docketed. The Missouri legislature, however, has not seen fit to enact new abortion legislation.

nial, vacate that order, grant the petition and review the judgment below.

Respectfully submitted

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Certificate of Counsel

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

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